

EXHIBIT 4



400 Commerce Court
Goldsboro, NC 27534
877.222.5522

April 6, 2023

**CERTIFIED MAIL
(7022 3330 0000 3870 2266)
AND REGULAR U. S. MAIL**

Bayport Construction Corp
1286 Prospect Place
Brooklyn, NY 11213

Re:	Policy Number:	L036009259-0 L036009259-1 L036009259-2
	Claim Number:	01-NY-012463
	Insured:	Bayport Construction Corp
	Claimant:	LAM Group and LAM Pearl Street Hotel LLC
	Case Name:	LAM Group and LAM Pearl Street Hotel LLC VS Anthony Rinaldi LLC DBA The Rinaldi Group, Bayport Construction Group et al
	Case No.	650465/2022
	Venue:	Supreme Court of the State of New York

RESERVATION OF RIGHTS

Dear Sir or Madam:

Atlantic Casualty Insurance Company (ACIC) has examined the claims made in the above captioned lawsuit. It is ACIC's understanding that you are seeking a defense and indemnification for the claims made against you in the lawsuit. ACIC has reviewed the allegations, the ACIC policy, and other relevant information, where applicable. Based on this review, ACIC has determined that the plaintiff(s) in the lawsuit seek(s) damages that may not be covered under the policy. ACIC agrees to defend this matter on behalf of Bayport Construction Corp under a complete reservation of all of ACIC's rights. This letter explains certain coverage issues, discusses the terms and conditions under which ACIC will participate in your defense, and reserves all of ACIC's rights under the policy.

ACIC will discuss the allegations in the lawsuit but understands that these allegations are unproven and may be untrue, incomplete or embellished. ACIC does not conclude that any allegation is true. No statement in this letter should be construed otherwise.

AtlanticCasualty.net

FACTS AND COVERAGE SUMMARY

The lawsuit contains the following causes of action: Breach of Contract, Negligence, Breach of Warranty, Breach of Implied Warranty of Good Workmanship

Based on the complaint, LAM Group and LAM Pearl Street Hotel LLC owns the property at 215 Pearl Street, New York, NY. The building was construction started in 2018 and was completed in 2020. Bayport Construction completed masonry and stucco work for the project. It alleged that the work for the masonry and stucco work was not completed according to the contract documents, was defective and caused damages.

Policy number L036009259-0 was issued to Bayport Construction Corp, effective July 25, 2018 to July 25, 2019. The Policy's declaration page indicates the form of the insured's business was an Organization (Other than Partnership or Joint Venture). The policy contains a limit of liability of \$1,000,000 each occurrence limit. The policy has a \$500 per claim deductible for bodily injury/property damage.

Policy number L036009259-1 was issued to Bayport Construction Corp, effective July 25, 2019 to July 25, 2020. The Policy's declaration page indicates the form of the insured's business was an Organization (Other than Partnership or Joint Venture). The policy contains a limit of liability of \$1,000,000 each occurrence limit. The policy has a \$500 per claim deductible for bodily injury/property damage.

Policy number L036009259-2 was issued to Bayport Construction Corp, effective July 25, 2020 to July 25, 2021. The Policy's declaration page indicates the form of the insured's business was an Organization (Other than Partnership or Joint Venture). The policy contains a limit of liability of \$1,000,000 each occurrence limit. The policy has a \$500 per claim deductible for bodily injury/property damage.

The lawsuit does not state the total amount of damages sought. Accordingly, the potential exists for a judgment that exceeds the available policy limits. ACIC will not be responsible for any judgment in excess of the available limits.

If you have not already done so, you should notify any other primary insurer and any excess or umbrella insurer of this claim as soon as possible. ACIC's analysis of coverage is limited to this policy. If you are aware of any other ACIC policies that may afford coverage for this matter, please inform ACIC immediately.

RELEVANT POLICY PROVISIONS

The above referenced policies contain the Commercial General Liability Coverage Form CG 00 01 10 01 that has the following language:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:*
- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and*
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.*
- No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.*
- b. This insurance applies to "bodily injury" and "property damage" only if:*
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";*
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and*

* * *

2. Exclusions

This insurance does not apply to:

* * *

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or*
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:*
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and*
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.*

* * *

j. Damage To Property

"Property damage" to:

* * *

- (5) That particular part of real property on which you or any*

contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.*

** * **

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or*

- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.*

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";*

- (2) "Your work"; or*

- (3) "Impaired property";*

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

** * **

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** *An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.*
- b.** *A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.*
- c.** *A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.*
- d.** *An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.*

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.*

* * *

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

* * *

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

* * *

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:*
- (1) How, when and where the "occurrence" or offense took place;*
 - (2) The names and addresses of any injured persons and witnesses;*
and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.*
- b. If a claim is made or "suit" is brought against any insured, you must:*
- (1) Immediately record the specifics of the claim or "suit" and the date received; and*
 - (2) Notify us as soon as practicable.*
You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:*
- (1) Immediately send us copies of any demands, notices, summonses legal papers received in connection with the claim or "suit";*
 - (2) Authorize us to obtain records and other information;*
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and*
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.*
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.*

* * *

SECTION V – DEFINITIONS

* * *

- 8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:**
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or**
 - b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by:**
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or**
 - b. Your fulfilling the terms of the contract or agreement.**
- 9. "Insured contract" means:**

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";*
- b. A sidetrack agreement;*
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;*
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;*
- e. An elevator maintenance agreement;*
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.*

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;*
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:*
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or*
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or*
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.*

** * **

- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.*

** * **

- 16. "Products-completed operations hazard":*

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:*
 - (1) Products that are still in your physical possession; or*
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:*
 - (a) When all of the work called for in your contract has been completed.*
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.*
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.*
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.*
- b. Does not include "bodily injury" or "property damage" arising out of:*

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;*
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or*
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.*

* * *

- 18.** *"Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:*
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or*
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.*

* * *

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:*

- (a) You;*
- (b) Others trading under your name; or*
- (c) A person or organization whose business or assets you have acquired; and*

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.*

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and*
- (2) The providing of or failure to provide warnings or instructions.*

- c.** *Does not include vending machines or other property rented to or located for the use of others but not sold.*

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and*
- (2) Materials, parts or equipment furnished in connection with such work or operations.*

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and*
- (2) The providing of or failure to provide warnings or instructions.*

THE POLICIES INCLUDE THE FOLLOWING ENDORSEMENTS:

EXCLUSION – PUNITIVE DAMAGES

This insurance does not apply to any claim of or indemnification for punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages. If a "suit" seeking both compensatory and punitive, exemplary

and/or statutorily enhanced damages, including, but not limited to, multiple damages has been brought against you for a claim covered by this policy, we will provide defense for such action. We will not have any obligation to pay for any costs, interest or damages attributable to punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages.

AGL-003 3/13

EXCLUSION – MOLD, BACTERIA, VIRUS AND ORGANIC PATHOGEN LIABILITY

This insurance does not apply to any claim, loss, costs or expense arising from any actual or alleged:

- (1) “bodily injury,” “property damage” or “personal and advertising injury;”*
- (2) damages for devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space; or*
- (3) fines, penalties and attorney fees, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize “organic pathogens;” or*
- (4) litigation or administration procedure in which any insured may be involved as a party;*

arising directly, indirectly, or in concurrence or in any sequence out of actual, alleged or threatened existence, exposure to, discharge, dispersal, deposit, release or escape of “organic pathogens,” whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

In addition, this insurance does not apply to any alleged “bodily injury,” “property damage,” “personal and advertising injury,” loss, costs or expense including but not limited to fines, penalties and attorney fees, arising out of or related to any form of “organic pathogens,” whether or not such actual, alleged or threatened existence, exposure to, discharge, dispersal, deposit, release or escape is negligently or intentionally caused by any person or entity and whether or not the liability of any insured is alleged to be direct or vicarious. This exclusion also applies whether or not such injury, damage, devaluation, cost or expense is expected or intended from the standpoint of any insured.

“Organic pathogen” means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, including but not limited to their byproducts such as mycotoxin, mildew, biogenic aerosol or scent.

AGL-054 3/13 (applicable to policies L036009259-0 and L036009259-1)

EXCLUSION – MOLD, BACTERIA, VIRUS AND ORGANIC PATHOGEN LIABILITY

This insurance does not apply to any claim, loss, costs or expense arising from any actual or alleged:

- 1. "bodily injury," "property damage" or "personal and advertising injury;"*
- 2. damages for devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space; or*
- 3. fines, penalties and attorney fees, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "organic pathogens;" or*
- 4. litigation or administration procedure in which any insured may be involved as a party;*

arising directly, indirectly, or in concurrence or in any sequence out of actual, alleged or threatened existence, exposure to, discharge, dispersal, deposit, release or escape of "organic pathogens," whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

In addition, this insurance does not apply to any alleged "bodily injury," "property damage," "personal and advertising injury," loss, costs or expense including but not limited to fines, penalties and attorney fees, arising out of or related to any form of "organic pathogens," whether or not such actual, alleged or threatened existence, exposure to, discharge, dispersal, deposit, release or escape is negligently or intentionally caused by any person or entity and whether or not the liability of any insured is alleged to be direct or vicarious. This exclusion also applies whether or not such injury, damage, devaluation, cost or expense is expected or intended from the standpoint of any insured.

"Organic pathogen" means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, including but not limited to their byproducts such as mycotoxin, mildew, biogenic aerosol or scent.

AGL-054 12-18 (applicable to policy L036009259-2)

EXCLUSION – EXPECTED OR INTENDED

Exclusion 2. a. of SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY is deleted and replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of any insured.

AGL-068 3/13

LIMITATION - RIGHT TO SELECT COUNSEL

We have the right to select counsel to represent any insured.

In the event that you or any insured or indemnitee are entitled by law to select independent counsel to defend you or any insured or indemnitee at the Company's expense and you or any insured or indemnitee elect to select such counsel, the attorney's fees and all other litigation expenses we must pay are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar claims in the community where the claim arose or is being defended.

AGL-074 3/13

INSURING AGREEMENT AMENDMENT - USE OF EXTRINSIC EVIDENCE - RIGHT TO DEFEND

A. Paragraph 1. a. of SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and the duty to defend the insured against any “suit” seeking covered damages. We will have the right, but not the duty, to defend any insured against any “suit” for which we dispute coverage. We will have no duty to defend or indemnify any insured against any “suit” seeking damages for “bodily injury” or “property damage” where there is no coverage under the policy. We will have the right, but not the duty, to defend those qualifying as an additional insured by way of an additional insured endorsement.***

We may look to extrinsic evidence outside of the allegations and/or facts pleaded by any claimant to determine whether we owe a duty to defend or indemnify against a lawsuit seeking “bodily injury” or “property damage,” provided that extrinsic evidence does not contradict a claimant's pleaded allegation. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in***

SECTION III – LIMITS OF INSURANCE; and

- (2) Our right and duty to defend a claim to which this insurance applies ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under COVERAGES A or B or medical expenses under COVERAGE C.***

Paragraphs b. (3), c. and d. under Paragraph 1. Insuring Agreement of SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY are deleted.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A and B.

B. Paragraph 1. a. of SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY is replaced by the following:

- a.** *We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right, but not the duty, to defend any insured against any “suit” seeking covered damages. We will have no duty to defend or indemnify any insured against any “suit” seeking damages for “personal and advertising injury” where there is no coverage under the policy. We will have the right, but not the duty, to defend those qualifying as an additional insured by way of an additional insured endorsement.*

We may look to extrinsic evidence outside of the allegations and/or facts pleaded by any claimant to determine whether we owe a duty to defend or indemnify against a lawsuit seeking “personal and advertising injury,” provided that extrinsic evidence does not contradict a claimant’s pleaded allegation and provided that evidence relates to a discrete coverage issue under the policy and not a merits or liability issue. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

(1) *The amount we will pay for damages is limited as described in SECTION III – LIMITS OF INSURANCE; and*

(2) *Our right and duty to defend a claim to which this insurance applies ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under COVERAGES A or B or medical expenses under COVERAGE C.*

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A and B.
AGL-077 10-16

CONDITION – ARBITRATION

If we and any insured do not agree whether coverage is provided under this policy for a claim made against any insured, then either party may make a written demand for arbitration.

When this demand is made, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will:

- (1) Pay the expenses it incurs; and*
- (2) Bear the expenses of the third arbitrator equally.*

Unless both parties agree otherwise, arbitration will take place in the county or parish in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply. Any decision agreed to or damages awarded by the arbitrators may be appealed to a court of competent jurisdiction.

AGL-096 3/13

AMENDED DEFINITION – PROPERTY DAMAGE

*Paragraph 17. of **SECTION V - DEFINITIONS** is replaced by the following:*

17. “Property damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or*
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.*

However, “property damage” does not include breach of contract, breach of any express or implied warranty, deceptive trade practices or violation of any consumer protection laws.

“Property damage” does not include any cost or expense to repair, replace or complete any work to any property that you, or any insured, are otherwise obligated to repair, replace or complete pursuant to the terms of any contract.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

AGL-106 3/13

NEW YORK CHANGES – COMMERCIAL GENERAL LIABILITY COVERAGE FORM

A. *The following is added as Paragraph e. to the Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition (Paragraph 2. of Section IV – Commercial General Liability Conditions):*

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- e. Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours*

in New York State, with particulars sufficient to identify the insured, shall be considered to be notice to us.

B. *Paragraph 3. of Section IV – Commercial General Liability Conditions is replaced by the following:*

3. Legal Action Against Us

a. *Except as provided in Paragraph b., no person or organization has a right under this Coverage Part:*

(1) To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

(2) To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

b. *With respect to "bodily injury" claims, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice. However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:*

(1) Brings an action to declare the rights of the parties under the policy; and

(2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

C. *The following provision is added and supersedes any provision to the contrary: Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.*

AGL-0163NY 1/09

EXCLUSION – BREACH OF CONTRACT

This insurance does not apply to any claim, loss, costs or expense and no duty to defend is provided by us for "bodily injury", "property damage", "personal injury" and "advertising injury" for claims, "suits", allegations, accusations,

charges, whether written or oral, express or implied for breach of contract, breach of an implied in law or implied in fact contract. This exclusion also applies to any additional insured under this policy.

AGL-169 10/16

COVERAGE ANALYSIS

This insurance requires that all occurrences, claims and suits be reported as soon as the insured is aware of an “*occurrence*” or an offense that may result in a claim. To the extent you were aware of the occurrence, claim or suit and failed to report it timely, and ACIC has been prejudiced as a result thereof, recent notice of this claim, occurrence and suit is untimely, and no coverage is afforded under the policy.

This insurance does not apply to “*property damage*” for which the insured is obligated to pay damages due to breach of contractual obligation. There is no coverage for breach of any contract between Bayport Construction Corp and any of the parties involved in the project.

This insurance does not apply to correct deficiencies in “*your work*” or “*your product*.” Further, this insurance does not apply to repair or replace “*impaired property*” that incorporates “*your work*” or “*your product*”. This insurance does not apply to “*property damage*” to “*impaired property*” arising out of a delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms. This insurance does not apply to guarantee “*your work*” or “*your product*” with regard to durability, timely and proper completion, quality or performance. This insurance does not apply to warranties and representations related to “*your work*.”

This insurance does not apply to any claim or award of punitive damages, exemplary and/or statutorily enhanced damages. There is no obligation to pay for any costs, interest or damages attributable to punitive, exemplary and/or statutorily enhanced damages, including but not limited to, multiple damages. There is no coverage for punitive damages.

This insurance does not apply to any claim loss or expense from any actual or alleged “*property damage*”, damage for devaluation of property or interference with the rights of others in the property; any fines or fees related to testing, monitoring, removal, clean up of any “*organic pathogen*”; or litigation or administrative procedure in which any insured is a party arising directly, indirectly or in concurrence or in any sequence out of actual, alleged or threatened existence, exposure to, discharge, dispersal, release or escape of any “*organic pathogen*” including, but not limited to, fungus, mold and mildew. The exclusion applies whether or not the release or escape is negligent or intentional and whether or not intended from the standpoint of any insured.

This insurance does not apply to “*property damage*” expected or intended from the standpoint of any insured. There is no coverage for damage that could have been expected or were intended by Bayport Construction Corp.

ACIC has the right to select counsel to represent any insured. In the event any insured is entitled by law to select independent counsel, the expenses ACIC must pay are limited to rates paid to

counsel retained by ACIC in the defense of similar claims in the community where the claim is being defended.

This insurance applies to “*property damage*” caused by an “*occurrence*”. We will have the right, but not the duty, to defend any insured against any “*suit*” for which we dispute coverage. We will have no duty to defend or indemnify any insured against any “*suit*” seeking damages for “*property damage*” where there is no coverage under the policy. We may look to extrinsic evidence outside of the allegations or facts pleaded to determine whether we owe a duty to defend or indemnify against a lawsuit provided that the evidence does not contradict the claimant’s pleaded allegations and relates to coverage not liability. We will have no duty to defend or indemnify any insured against any “*suit*” seeking damages for “*property damage*” where there is no coverage under the policy.

This insurance does not apply to coverage for “*property damage*” for cost or expense to repair, replace, or complete any work to any property that you (or any insured) are otherwise obligated to repair, replace or complete pursuant to the terms of any contract with any person. Property damage does not include breach of contract, breach of any express or implied warranty, deceptive trade practices or violation of any consumer protection laws.

This insurance does not apply to express or implied breach of contract, or breach of an implied in law or implied in fact contract, whether written or oral. There is no coverage for breach of any contract between Bayport Construction Corp and any of the parties involved in the project.

If we and any insured do not agree whether coverage is provided under this policy for a claim made against any insured, then either party may make a written demand for arbitration.

Other provisions of the policy may apply.

DEFENSE ARRANGEMENT AND RESERVATION OF RIGHTS

ACIC is continuing its investigation of this matter, is participating in your defense and may participate in settlement negotiations, contribute to a settlement, contribute to payment of a judgment, post an appeal bond or undertake other actions to bring the lawsuit to a close, all subject to the express understanding that ACIC reserves all of its rights to the extent allowed by law, in addition to its rights to contest coverage under any of the policy provisions set out above or others which may apply.

Where allowed by law, these reserved rights include, but are not limited to, the right to allocate the costs of defending the insured (including appeal bonds) between non-covered and potentially covered claims and to seek recoupment from the insured of defense costs and fees allocable to the defense of non-covered claims. They also include, but are not limited to, the right to withdraw from the defense of this action at any time in the future.

Also, where allowed by law, we reserve the right to obtain an allocation of damages between covered and uncovered claims in any future judgment, settlement, arbitration, mediation or similar disposition.

Moreover, we remind you that ACIC also has the right to file a declaratory relief action to have a court determine ACIC's rights under the policy and its obligations to you. We also remind you that ACIC has the right to recover any defense costs, settlement, or judgments from any other insurance carriers and from any third party, which we may exercise by filing a lawsuit against such persons or entities in your name.

We have assigned your defense to James Pannone with Morris Duffy Alonso and Faley. Attorney Pannone should be in contact with you in the near future.

Note that ACIC will pay your defense costs only as of the date on which you tendered your defense to ACIC, which was on December 22, 2022.

ACIC will not pay any fees or expenses associated with coverage matters. In addition, you always have the right (but not the obligation) to consult (at your own expense) another attorney to represent you in connection with these claims, your ACIC coverage, and any liability exposure that may be in excess of or outside the coverage of the ACIC policy. Should you decide to do so, ACIC will cooperate with any such counsel to the extent reasonably possible.

ACIC reserves all of its rights and defenses under the terms, conditions and exclusions of the policy, whether or not they have been specifically referred to in this letter. Any action taken by ACIC, its agents, representatives, or attorneys in investigating the incident involved, or in defending any law suit filed in connection with this matter, or in participating in any settlement discussions or negotiations, does not constitute and is not intended as a waiver of any rights or defenses available to ACIC and shall not prohibit ACIC from asserting, at a later time, any rights or policy defenses which may be available now or at that time. All such rights and defenses are hereby expressly reserved. Nothing in this letter shall be construed as a waiver, extinguishment, or modification of any rights, remedies, terms, conditions, and/or exclusions contained in the policy and or provided by applicable law.

ACIC may reconsider its position in light of any additional information you may have or any analysis you may wish to present that, in your opinion, shows that coverage applies to this claim so clearly that ACIC should have no need to reserve its rights. If you wish us to re-examine this matter on that basis, please write to the undersigned representative, setting out any such additional information or analysis. If such additional information is included in documents that have not already been supplied to ACIC, please enclose copies of those documents.

As mentioned above, ACIC will provide you with a courtesy interim legal defense to this action pending an ongoing investigation. However, because ACIC's defense is a courtesy interim defense, you are entitled to counsel of your choosing and to reimbursement of the reasonable costs associated therewith should you chose to decline representation by the counsel ACIC has appointed for you.

Should you wish to take this matter up with Insurance Division of the New York State Department of Financial Services, you may file with the Department either on its website at www.dfs.ny.gov/consumer/fileacomplaint.htm or you may write to or visit the Consumer Assistance Unit, NYS Department of Financial Services, at: One State Street, New York, NY 10004-1511 or One Commerce Plaza, Albany, NY 12257.

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

For information on our privacy policy, visit www.atlanticcasualty.net/privacy.

Thank you,



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